

SPECTRUM OIL AND GAS CO.

IBLA 82-621

Decided May 24, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, disapproving assignment of record title for oil and gas lease U-23502.

Vacated and remanded.

1. Oil and Gas Leases: Assignments or Transfers -- Administrative Authority: Generally

BLM may not act to approve or disapprove the assignment of an oil and gas lease where the assignor's legal guardian has revoked the power of attorney pursuant to which the assignment was executed and has requested BLM to disapprove the assignment, as any action would be contrary to established Departmental policy to maintain the status quo of the lease where there is evidence of a private dispute or controversy concerning the validity of the assignment.

APPEARANCES: Jon R. Collins, Esq., Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Spectrum Oil and Gas Company has appealed from a letter decision dated February 22, 1982, by the Utah State Office, Bureau of Land Management (BLM), which disapproved assignment of record title for oil and gas lease U-23502 to appellant because it was requested to do so by the assignor's (Duncan Miller's) legal guardian.

In the statement of reasons, appellant asserts that by instrument of May 18, 1981, Duncan Miller granted one Allen Myers his power of attorney, which was filed with the Colorado State Office, BLM, on May 20, 1981. Appellant states that on or about June 8, 1981, Myers, acting for the benefit of Miller, assigned the lease to Spectrum, which assignment was filed for approval with BLM on July 15, 1981. Appellant contends that the assignment of the lease is valid and binding on all parties, and that BLM's failure to approve the assignment was not justified, because the transactions between the parties were in compliance with 30 U.S.C. § 187(a) (1976), and the applicable regulations.

The record reveals that on August 26, 1981, the Eighth Judicial District Court of Nevada appointed Jared E. Shafer, Public Administrator, as guardian of the estate and person of Duncan Miller. Also on August 26, 1981, Shafer issued a notarized revocation of all powers of attorney theretofore executed by Duncan Miller. Shafer also requested BLM to withhold approval of assignments pending his review thereof claiming that Myers may have violated the terms of the power in assigning the lease. By letter dated January 27, 1982, Shafer advised BLM that he could not allow the assignment of U-23502 (among others) because Miller would derive no benefit therefrom. Accordingly, BLM returned appellant's assignment unapproved.

[1] An oil and gas lease may be assigned "subject to final approval by the Secretary." 30 U.S.C. § 187a (1976). The filing of a proposed assignment in conformity with the applicable law and regulations ordinarily requires approval by the Department except for lack of qualifications of the assignee or lack of sufficient bond. 30 U.S.C. § 187a (1976); Montana Bank, Trustee, 54 IBLA 359 (1981). Indeed, on the date of execution of an assignment, the assignment is effective as between the parties, see Frederick J. Schlicher, 54 IBLA 61, 65 (1981), and all that remains is for the assignee to obtain approval of the assignment.

Under the terms of the power of attorney, Myers had authority to assign Miller's interest to appellant. Whether Myers violated the terms of the power, as claimed by Shafer, so as to render the assignment invalid, raises issues which the parties must resolve between themselves. BLM is not the appropriate forum to dispose of the conflicting claims.

The well-established procedure for dealing with cases of this type is set forth in Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 70 n.8 (1966): "Where there is a private dispute as to the validity or effect of an assignment, the Secretary does not decide the question and he will not approve the assignment or take other action until the parties settle their dispute in court. See McCulloch Oil Corp. of California, Int. Dept. Decision No. A-30208 (Nov. 25, 1964)."

When presented with Shafer's allegations, BLM was on notice of a controversy existing between the parties. ^{1/} Under the circumstances BLM acted contrary to Departmental policy when it proceeded to disapprove and return the assignment. Where as here, there is evidence of a private dispute as to

^{1/} Even before Shafer contacted BLM, however, there was reason for BLM to believe that a controversy or dispute concerning the rights to lease existed. On Aug. 1, 1981, Viking Resources Corporation filed with BLM a partial assignment of the same lease U-23502 signed July 15, 1981, wherein Myers assigned 25 percent of the record title to it retaining 75 percent in the assignor. Also, the file contains a memorandum dated Oct. 8, 1981, from the Colorado State Director, BLM, to the Utah State Director, BLM, advising that the power of attorney met the requirements of 43 CFR 3102.2-1(c), and that it was considered accepted effective May 20, 1981, under file number C-0126690. The memorandum also states that the Colorado BLM would not approve or disapprove any pending assignments from Miller without approval from the Solicitor's Office because of the allegations that the power might be questionable.

an oil and gas lease assignment, the Department has historically declined to adjudicate issues regarding the validity or effect of the assignment and maintained the status quo until the parties have had an opportunity to settle their dispute privately or in court. William B. Brice, 53 IBLA 174, 177, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981); Petrol Resources Corp., 65 IBLA 104, 109 (1982). In this instance, the correct course of action was for BLM to hold the matter pending until the parties settled their differences. When BLM acted favorably on Shafer's request over that of appellant's it presumed to dispose of the controversy. The Department will not take sides in private disputes; thus fairness dictates that we restore the status quo. The appellant's application for approval of the assignment of lease U-23502 will remain pending and BLM is instructed not to approve this or any assignment of the lease until the parties claiming an interest in the lease have filed in the State Office evidence of either an agreement or a court order which shows that they have settled their dispute. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded to BLM for further disposition in accordance with this decision.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

2/ We have directed the same course of action in a recent case involving another purported assignment of a Duncan Miller lease by Allen Myers. Fimple Enterprises, Inc., 70 IBLA 180 (1983).

